

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

TASHAL SHIELDS, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

PLAINTIFFS

v.

CIVIL ACTION NO. 1:19-CV-00222-GHD-RP

METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY

DEFENDANT

ORDER GRANTING JOINT MOTION REGARDING STAY OF PROCEEDINGS

Presently before the Court is the parties' joint motion [24] seeking, in essence, to temporarily continue the stay of these proceedings [20] that the Court entered on January 29, 2020, based on a pending Fifth Circuit decision in a case raising similar issues. Upon due consideration, the Court finds that the present motion should be granted; the Court shall continue the previously-entered stay of these proceedings as described below and as requested by the parties.

Previously, the parties filed a joint motion seeking to have the Court stay these proceedings pending a now-entered ruling by the Fifth Circuit in the matter of *Mitchell v. State Farm Fire & Casualty Company*, No. 18-60776 (consolidated with No. 19-60201), 2020 WL 1503107 (5th Cir. Mar. 30, 2020), which the Court granted [20]. Both the plaintiffs in *Mitchell* and the Plaintiffs in the case *sub judice* allege, *inter alia*, breach of contract based on the respective defendant insurers' alleged depreciation of labor and non-materials in the calculation of the "actual cash value" amounts regarding the payment of homeowners' structural damage claims. As to that claim, the Fifth Circuit ruled that the term "actual cash value" was undefined in the subject policies and thus is construed against the insurer. *Mitchell*, 2020 WL 1503107, at *1, *4-*5. In so deciding, the

Fifth Circuit held that the *Mitchell* plaintiffs' claim for breach of contract can move forward in the district court as a class action. *Id.*

In compliance with the Court's prior order staying these proceedings, the parties have informed the Court of the Fifth Circuit's decision [24]. Based on the present posture of the *Mitchell* appeal, wherein State Farm has indicated that it will file a petition for rehearing or rehearing *en banc* in the Fifth Circuit by April 27, 2020, the parties now jointly move this Court to enter a schedule as follows regarding the lifting of the stay in this matter:

- (1) If the Fifth Circuit declines to rehear *Mitchell*, the Defendant herein will file an amended responsive pleading in this matter within 14 days of the date of the Fifth Circuit's denial; if the Defendant responds by motion, the Plaintiff shall respond within 21 days, and any reply by the Defendant will be due within 14 days of the Plaintiff's response; or
- (2) If the Fifth Circuit agrees to rehear the *Mitchell* appeal, the parties herein will apprise this Court within 10 days regarding further proceedings in this matter.

The Court finds that the parties' joint proposal is appropriate.

ACCORDINGLY, it is HEREBY ORDERED that:

- (1) The parties' joint motion regarding the stay of proceedings [24] is GRANTED;
- (2) The STAY OF PROCEEDINGS previously entered by the Court in this matter [20] temporarily REMAINS IN FORCE as described above;
- (3) If the Fifth Circuit declines to rehear the appeal in *Mitchell v. State Farm Fire & Casualty Company*, No. 18-60776 (consolidated with No. 19-60201), this Court shall lift the stay of proceedings in this matter and the Defendant herein will file an amended responsive pleading within 14 days of the date of the Fifth Circuit's denial; if the Defendant responds by motion, the Plaintiff shall respond to the Defendant's motion within 21 days, and any reply by the Defendant in support of its motion will be due within 14 days of the Plaintiff's response; and
- (4) If the Fifth Circuit agrees to rehear the appeal in *Mitchell v. State Farm Fire & Casualty Company*, No. 18-60776 (consolidated with No. 19-60201), the parties herein will apprise this Court within 10 days of the Fifth Circuit's order agreeing to rehear the appeal, regarding the lifting of the stay and resumption of further proceedings in this matter.

SO ORDERED, this, the 14th day of April, 2020.



SENIOR U.S. DISTRICT JUDGE